

Exhibit 5

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
BUS. LIT. SESSION
CIVIL ACTION NO.
SUCV2019-03714-BLS1

BRANDA PEEBLES and JOSHUA
BERGER, Individually, and on BEHALF
OF ALL OTHERS SIMILARLY
SITUATED,
Plaintiffs,

vs.

JRK PROPERTY HOLDINGS, INC.,
STEVENS POND APARTMENTS
PROPERTY OWNER, LLC, and ONE
WEBSTER APARTMENTS
PROPERTY OWNER, LLC,
Defendants.

PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

Plaintiffs Branda Peebles and Joshua Berger, Individually, and on Behalf of All Others Similarly Situated, herein move for Class Certification pursuant to Mass. R. Civ. P. 23 and G. L. c. 93A(9)(2).

As set forth in detail in the accompanying memorandum of law, this action involves the Defendants' JRK Property Holdings, Inc. ("JRK"), Stevens Pond Apartments Property Owner, LLC ("Stevens Pond"), and One Webster Apartments Property Owner, LLC ("One Webster") (collectively the "Defendants" or "JRK") violations of the Massachusetts Security Deposit Statute, G. L. c. 186, §15B *et seq.*

Specifically, JRK, as an owner and/or property manager of six (6) residential apartment complexes in the Commonwealth of Massachusetts comprised of over 1,000 apartment units,

routinely deducts monies from its tenants' security deposit funds to remedy "reasonable wear and tear" in violation of G. L. c. 186, §§15B(4)(iii), (6)(e) and (6)(c). JRK engages in this practice pursuant to a lease addendum (the "Move Out Addendum") that it includes in all its residential leases at all its properties.

The Move Out Addendum requires tenants to have their apartment unit professionally cleaned prior to moving out, and if they do not, JRK deducts funds from the tenants' security deposit monies to remedy normal wear and tear such as touch-up painting and carpet cleaning. Every tenant at a JRK owned or managed property during the relevant time was subject to the Move Out Addendum charges.

The named Plaintiffs, Branda Peebles ("Ms. Peebles") and Joshua Berger ("Mr. Berger"), are former tenants of JRK who filed the instant class action lawsuit on behalf of themselves and all other similarly situated (collectively the "Plaintiffs").

As set out further below, the Plaintiffs allege that JRK unlawfully retained the security deposit monies of tenants at all of its properties during the relevant time period to remedy "reasonable wear and tear" in violation of G. L. c. 186, §§15B(4)(iii), (6)(e) and (6)(c). As a remedy, the Plaintiffs seek the return of *all* the withheld security deposit monies retained by JRK at *all* JRK properties during the time period.

Further, the Plaintiffs have alleged that the inclusion of the Move Out Addendum in JRK's leases constitutes an unlawful lease provision in violation of G. L. c. 186, §15B(6)(c), the penalty for which is also JRK's forfeiture of the entirety of the tenant's security deposit. To that end, the Plaintiffs are seeking the return of *all* the security deposit monies retained by JRK from *any* tenant for *any* reason whatsoever at *all* JRK properties during the time period.

Finally, G. L. c. 186, §15B(7) *mandates* damages in the amount of three times the entire security deposit, plus 5% (five percent) interest from the date of the violation as well as attorney's fees and costs for JRK's violation of G. L. c. 186, §15B(6)(e).

Plaintiffs seek to certify the following main class of Plaintiffs:

Current and former tenants of any building owned or managed by JRK in the Commonwealth of Massachusetts during the relevant time period who paid a security deposit and who's lease contained the Move Out Addendum.

Alternatively, the Plaintiffs would seek to certify any of the following sub-classes:

- Current and former tenants of any building owned or managed by JRK in the Commonwealth of Massachusetts during the relevant time period who paid a security deposit and who's lease contained the Move Out Addendum and who had any portion of their security deposit monies retained by JRK for any reason whatsoever.
- Current and former tenants of any building owned or managed by JRK in the Commonwealth of Massachusetts during the relevant time period who paid a security deposit and who's lease contained the Move Out Addendum and who had any portion of their security deposit monies retained by JRK for "carpet cleaning", "touch-up paint" or to remedy other normal wear and tear.
- Current and former tenants of Stevens Pond and One Webster during the relevant time period who paid a security deposit and who's lease contained the Move Out Addendum and who had any portion of their security deposit monies retained by JRK for any reason whatsoever.
- Current and former tenants of Stevens Pond and One Webster during the relevant time period who paid a security deposit and who's lease contained the Move Out Addendum and who had any portion of their security deposit monies retained by JRK for "carpet cleaning", "touch-up paint" or to remedy other normal wear and tear.

The Plaintiffs now move this Honorable Court to certify a class of Plaintiffs pursuant to Mass. R. Civ. P. 23 and G. L. c. 93A(9)(2). For the reasons set forth herein, the Plaintiffs' Motion for Class Certification should be **ALLOWED**, and a class of Plaintiffs as proposed and defined by the Plaintiffs below should be certified.

BRANDA PEEBLES & JOSHUA
BERGER, INDIVIDUALLY AND
ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED,
By their Attorneys,

/s/ *Keith L. Sachs*

Keith L. Sachs (BBO# 634025)
Shaun M. Khan (BBO# 681080)
DDSK Law LLC
900 Cummings Center
Suite 210-U
Beverly, MA 01915
P: (978) 338-6620
F: (978) 338-6621
ksachs@ddsklaw.com
skhan@ddsklaw.com

Dated: February 28, 2023

CERTIFICATE OF SERVICE

The foregoing was sent electronically on this date to counsel of record at the following:

Thomas Wintner: twintner@mintz.com
Mathilda McGee-Tubb: MSMcGee-Tubb@mintz.com

Dated: February 28, 2023

/s/ *Keith L. Sachs*